

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**





75-1393

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Docket No. 75 - 1393

UNITED STATES OF AMERICA,  
Appellee,

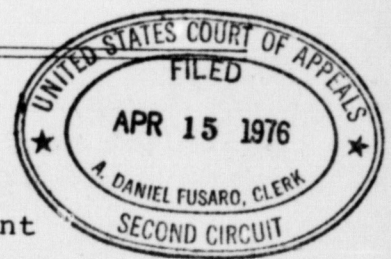
-vs.-

JOE TRUMAN BOYD, ET AL.,  
Appellants.

On Appeal From The United States District Court  
For The Southern District Of New York

REPLY BRIEF IN BEHALF OF  
APPELLANT ROBERT E. FORD

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# TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities .....	-iii-
Response to Government's Statement of Facts ...	1
1. The Early Meetings Between Boyd and Joiner. (Gov. Br., p. 6) .....	2
2. Boyd Meets Segal. (Gov. Br., p. 6-8).	2
3. Boyd Acquires Select. (Gov. Br., pp. 8-9) .....	2
4. Select Issues its First Stock. (Gov. Br., pp. 9-10) .....	2
5. The January 22 Select Board of Directors Meeting. (Gov. Br., pp.10-12)	3
6. Boyd and Segal Lock Up the Stock. (Gov. Br., p. 12) .....	3
7. The January 27 Select Documents Boyd Delivered to Segal. (Gov. Br., pp.13-14)	3
8. The Falsity of the January 27 Documents. (Gov. Br., pp. 15-20) .....	3
9. Segal Makes the Market for Select. (Gov. Br., pp. 20-22) .....	10
10. Select Acquires the Patio Building. (Gov. Br., pp. 22-3) .....	10
11. The Cover-Up Begins. (Gov. Br., pp. 23-27) .....	10
12. Select Acquisition Activities During the Cover-Up. (Gov. Br., pp. 27-30) .	11
A. The California Land .....	11
B. EMS .....	12
C. The Stroud Property .....	12



	<u>Page</u>
13. The Cover-Up Continues: Boyd Goes to the SEC. (Gov. Br., p. 31) .	13
14. The March 28 Certified Financial Statements. (Gov. Br., pp. 32-3) ...	13
15. The Fraudulent News Release and Publicity Flyer. (Gov. Br., p. 33) ..	14
16. April 1970: Restoring the False Market in Select Stock. (Gov. Br., pp. 34-37) .....	14
17. Mullenax's Fraudulent Loans. (Gov. Br., pp. 37-41) .....	15
Argument .....	15
POINT I - Ford Should have been Granted a Separate Trial. Moreover, the Government's Proof Demonstrated Multiple Conspiracies of Which he was not a Member .....	15
POINT II - The Court's Charge on Multiple Conspiracies was Insufficient, Im- Proper and Prejudicial .....	16
POINT III - The Court Erred in its Charge as to Venue .....	17
Conclusion .....	18

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases:</u>	
<u>United States v. Cohen</u> , 518 F. 2d 727 (2d Cir., 1975) .....	17
<u>United States v. Tramunti</u> , 513 F. 2d 1087 (2d Cir., 1975) .....	17



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REPLY BRIEF IN BEHALF OF  
APPELLANT ROBERT E. FORD

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Response to Government's  
Statement of Facts

The government's statement of facts unintentionally bears witness to our contentions that the conspiracy charged by the indictment in fact consisted of multiple conspiracies, and that the defendant Ford

was deprived of the opportunity to have his innocence or guilt adjudged upon his own conduct and knowledge. Taking the evidence from its own point of view, the government has managed to compress the facts of the case into forty-three printed pages. We shall, in response to that statement of facts, adopt the numerical and alphabetical references by which the government has categorized the seventeen phases and additional sub-phases which comprised the multiple conspiracies proved at trial.

1. The Early Meetings between Boyd and Joiner. (Gov. Br., p.6).

The government makes no reference to Ford.

2. Boyd Meets Segal. (Gov. Br., p. 6-8).

The government makes no claim that the defendant Ford had any knowledge or participation in the Boyd-Joiner-Segal East Coast effort to create an artificial market in Select stock.

3. Boyd Acquires Select. (Gov. Br., pp. 8-9).

The government makes no claim that Ford had any knowledge or participation in the acquisition of Select or in the allegedly fraudulent circumstances surrounding that acquisition.

4. Select Issues its First Stock. (Gov. Br., pp. 9-10).

The government makes no claim that Ford had any knowledge or participation with respect to the issuance of the stock to various nominees or with respect to Segal's



involvement.

5. The January 22 Select Board of Directors Meeting.  
(Gov. Br., pp. 10-12).

The government's claim with respect to Ford under this section of its brief is not that he did, knew about or participated in something wrong, but rather that he "much later" backdated certain documents so as to make it appear that they had been executed during this period of time. See: Discussion under Item 8, infra.

6. Boyd and Segal Lock Up the Stock. (Gov. Br., p. 12).

The defendant Ford is not alleged to have had any participation in or knowledge of the "lock up" or its surrounding circumstances.

7. The January 27 Select Documents Boyd Delivered to Segal.  
(Gov. Br., pp. 13-14).

This portion of the statement of facts makes no mention of the defendant Ford.

8. The Falsity of the January 27 Documents.  
(Gov. Br., pp. 15-20).

This section of the government's brief deals with the documentation concerning: (a) the New Mexico mica mines, (b) the Grube property, and (c) the Texas oil and gas leases. No attempt is made by the government to connect Ford with anything concerning the Grube property. We shall now address the contention with respect to the remaining two properties.

In his trial testimony, Ford stated that Goodloe was a former client for whom Ford had sporadically done legal work during the period from 1952 through 1962. After a lapse of almost eight years, Goodloe consulted Ford about a contract for a pending trade to Select Enterprises of certain Texas oil and gas leases and a mica mine. Following a negotiation session in Midland, Texas, attended by Ford, Ford drew up a series of contracts for the sale of those properties (A. 1329-30; GX 33, 36). Thereafter, on January 26, 1970, pursuant to Goodloe's request, Ford rendered two title opinions with respect to the aforementioned properties (A. 1333-7; GX 34, 37; DX E and F\*).

One of the chief issues at trial with respect to Ford was whether he rendered the oil and gas lease opinion in March, 1970 and backdated it to January for the purpose of fraudulently depicting such documentation to have existed prior to Select's entry into the over-the-counter market.

No witness testified that such a backdating in fact occurred. Instead, the government relied upon certain testimony given by Ford more than two years earlier, in

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\*The noted prosecution and defense exhibits are, respectively, identical, except that certain additional attachments are affixed to the prosecution exhibits, and Ford testified that he did not affix those documents to his opinion (A. 1333).



March, 1972, during a civil suit related to the oil and gas lease transaction. That prior testimony was read into the trial record as follows:

"Q. When had you seen those, sir?

"A. I wrote a title opinion for Select Enterprises some time in March, I believe, and I had before me the title opinion by another attorney and I also had that document and I had some other supporting affidavits and opinions in which I wrote the opinion saying that Select Enterprises had title to the leasehold estate.

"Q. Did you have the originals of the assignments into Goodloe in your possession at the time?

"A. Yes, I did.

"Q. Had they been recorded at that point?

"A. No, they hadn't." (A. 1259)

Ford further stated as follows during that prior testimony:

"Q. We obtained a reference from Mr. Barnett which indicated that possibly this title opinion that you wrote in connection with the Commanche County oil properties was dated January 26, 1970, and lease so reflected in these minutes on the second page. Would that be quite possibly the correct date of that title opinion?

"A. No, it isn't. That opinion was done just prior to that board meeting and I wish I had a copy of it. Mr. Goodloe and the boy, they took my entire file with them. Maybe when Roma Dell gets back, we can dig around. I don't know. They may have wanted a date in January, but I know it was not done except for -- especially except for this board meeting." (A. 1270-1271)

It is clear that during the above quoted testimony, Ford was not shown a copy of the title opinion in question,

nor did he have one available to him, and he repeatedly stated that fact on the record (A. 1285-6). His trial testimony herein forcefully asserted that the opinion had been written on January 26, as dated (A. 1333), and he explained the inaccuracy of his prior testimony due to the fact that a copy of his opinion letter was not available to him at the time of his prior testimony (A. 1397-8).

The basis for Ford's good faith claim of error is obvious. There had been, in fact, as noted in section 5 of the government's statement of facts, a board meeting on January 22, 1970. The question of whether, more than two years later and without any document in front of him, Ford confused the two meetings, was certainly a question of fact for the jury. However, in view of the gross quantity of testimony and innumerable transactions which were the subject of evidence at this multiple conspiracy trial, it is most likely that the jury was unable to make Ford's version of events the subject of individualized consideration.

The co-defendant Barnett, a certified public accountant who testified in his own behalf, corroborated the defendant Ford's claim that both the oil and gas title opinion and the mica mine title opinion were in existence prior to the preparation of the Select balance sheet, and were utilized by Barnett in the preparation of that balance sheet (A. 1553-1555). Significantly, the



jury acquitted Mr. Barnett.

At an earlier point in its statement of facts, the government seeks to create the impression of some sort of circumstantial corroboration for its claim that Ford's title opinions were backdated. Thus, at p. 13 of its brief, the government notes: "Significantly, Boyd did not show Segal in New York on January 26 any contract, conveyance, or opinion letter for the CA Morris mica mines, the Grube property, the Texas oil and gas leases, or the Patio Building." However, as previously noted by the government, at pp. 11-12 of its brief, the title opinions were prepared by Ford in Texas on January 26, 1970, and it is unlikely that they would be available for presentation in New York on the same day.

Another item of "circumstantial evidence" apparently asserted by the government is that: "Ford's title opinion letter to Select on the mica mines, dated January 26, 1970 (GX 34), is addressed to Select at 'Patio Building', an address which Select did not have until mid-February, 1970." This assertion is thoroughly misleading. The owner of the building, Roscoe C. Maxson, testified as a government witness (Tr. 1452 et seq.). He made clear that Boyd first leased the premises for Select and subsequently arranged to purchase the building for Select. (Tr. 1452-1473). Under direct examination, with respect to the lease arrangement, Maxson was led by the prosecutor into giving the following testimony:

"Q. I would like to ask if on or about the latter part of January or the first of February you had occasion to have a discussion with Mr. Boyd, Joe Truman Boyd, at your place of business at the Patio Building in Midland?

"A. Yes.

\* \* \*

"Mr. Boyd came into my office and was looking for office space and he asked me what I had for rent in the building. I said, well, I have got space right across the hall from us, which would be in the north wing of the Patio Building.

"So, we went over and looked at it and he said this would be just fine."  
(Tr. 1452-3)

Then, "maybe the next day or a day or a few after that" Boyd arranged for additional rooms in the Building, and the rent was agreed at \$650.00 per month, although the first rent payment was not received until "some time later" (Tr. 1454).

It can thus be seen that a Ford title opinion dated January 26, 1970, and in fact drawn on that date, could reasonably and accurately have been addressed to Select at the Patio Building. There was no testimony that the lease was not in effect on or about January 26. Indeed, Joiner, another government witness testified that on January 30 Boyd had revealed to him that the Patio acquisition deal was already in progress (Tr. 982). According to Maxson, the rental had already been in effect when Boyd proposed the Patio Building purchase by Select (Tr. 1454-5).

There does not appear to be any claim by the



government that Ford's title opinion with respect to the mica mine acquisition contained any misstatement of fact other than the government's unsupportable argument that Ford had backdated the document (Gov. Br., p. 16). However, with respect to the Texas oil and gas leases, the government called one James E. Peterson who claimed to have an oral agreement with Goodloe for equitable ownership of a share of those leases. According to Peterson, who was serving a prison sentence at the time of trial for defrauding the Medicare program, he and his brother had entered into an oral agreement with Goodloe in the Fall of 1969 whereby the three men, through bank loans, purchased the oil and gas leases in question. Peterson claimed that Ford attended a meeting with Goodloe and assured the Petersons that their interest in the venture would be protected and that Ford would draw the appropriate legal documents to do so. Peterson further claimed that he persisted in that understanding through December, 1970, when he checked filed documents at the local courthouse and discovered that he and his brother had no interest in the leases and that the leases had earlier been conveyed to Select by Goodloe (A. 1244-52; GX 161, 162). Peterson's credibility as to these claimed conversations with Ford was severely impeached when he admitted that he had not included his alleged ownership of the leases in his own net worth statement (A. 1284-5). In short, Peterson had nothing whatsoever to support his alleged ownership interest or his claim that Ford was aware

of such a claim of interest on January 26, 1970, when Ford rendered a title opinion with respect to the property. In his trial testimony, Ford categorically denied having any such knowledge (A. 1391-6).\*

There is no claim made by the government that Ford participated in or knew of any inflated valuation of the mica, oil and gas, or Grube properties.

9. Segal Makes the Market for Select. (Gov. Br., pp. 20-22)

There is no claim made by the government that Ford participated in or was aware of the illegal activities of Segal and his numerous East Coast market manipulators.

10. Select Acquires the Patio Building. (Gov. Br., pp. 22-3)

There is no claim that Ford was aware of or engaged in any of the allegedly fraudulent activities connected with the acquisition of the Patio Building.

11. The Cover-Up Begins. (Gov. Br., pp. 23-27)

Under this heading, the government discusses its evidence as to falsified due diligence files, fraudulent acquisitions of Diamond Bros. Company and the Riverside

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\*Since there was nothing in writing and nothing ever filed in behalf of the purported Peterson interest, it is difficult to understand how such an interest, even if it did exist, would be detrimental to the public stockholders of Select.



Hotel, false stock issuances on February 24, and an allegedly false February 20 balance sheet. No claim is made that Ford was aware of or participated in these activities.

12. Select Acquisition Activities During the Cover-Up.  
(Gov. Br., pp. 27-30)

A. The California Land.

The government's evidence showed that the Select California land acquisitions had an actual value which was substantially less than the approximate \$25 million at which they were listed in Select's March certified balance sheet.

Ford did not give a title opinion on this land (A. 1368). Indeed, Ford's conduct with respect to this land presents objectively verifiable evidence that Ford promptly and candidly revealed to the Securities and Exchange Commission the only fact in this case which was shown to have come to his knowledge with respect to false claims concerning Select acquisitions. On or about April 13, 1970, Ford travelled to California for the purpose of recording the various deeds with respect to the California property (A. 1360-62). He took the opportunity to examine portions of the property that was being conveyed (A. 1363-6). He had been requested to accompany Boyd to an appearance before the SEC in Dallas on April 17. Having missed a plane connection, he arrived at the

SEC hearing at approximately 2:20 p.m., in the midst of Boyd's testimony (A. 1369-70).

A Select letter to stockholders, dated March 28, 1970, and signed by Knisely, had described the California land in glowing terms and as being located in the Imperial Valley of California (GX 4; A. 1376). A Select brochure had described the land as being located in the "Rich, fertile Imperial Valley of California." (GX 5; A. 1376). There is no evidence that Ford had any knowledge of these fraudulent misrepresentations. Indeed, when the SEC examiner who was questioning Boyd asked Ford as to the nature of the land, Ford described it as being "table top flat, sandy, loam soil." (A. 1375). At the end of that day, Ford was advised by Boyd that Ford had been relieved of further duties and responsibilities with respect to the representation of Select, and Ford immediately so advised the SEC examiner (A. 1378).

B. EMS.

There is no evidence that Ford had any knowledge or participation with respect to the Select acquisition of EMS.

C. The Stroud Property.

There is no evidence that Ford had any knowledge or participation with respect to any fraudulent



activities concerning the Stroud acquisition.\*

13. The Cover-Up Continues: Boyd Goes to the SEC.  
(Gov. Br., p. 31)

There is no claim that Ford participated in any false testimony allegedly given by Boyd on March 9, 1970, as outlined under this heading of the government's brief.

14. The March 28 Certified Financial Statements.  
(Gov. Br., pp. 32-3)

The government's brief states that "The bulk of the work on [the fraudulent March 28 (as of March 5) financial] statement took place at and after a Select board of directors meeting held March 26 at Ford's office.", and the government goes on to state that "The meeting was attended by Boyd, Knisely, Ford, Weber, Hansen, Goodloe, Chappel, Maxson, and later by Barnett."

The government has failed to advise this Court that the trial evidence established that Ford was present for only a short part of the actual meeting, and excused himself so that he could attend a local charitable theatrical

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\* Joiner testified that he picked up the stock certificates to be used in that acquisition from Ford at Ford's building, although Joiner's receipt does not mention Ford (GX 339-A, p. 1). In his trial testimony, Ford denied having been the person who gave the stock to Joiner (A. 1386), and Goodloe admitted in his SEC testimony that he had delivered the stock to Joiner (A. 1386-7). In any event, the stock in question was clearly stamped as being investment stock (A. 1197-8).

production in which he played a part. See: the testimony of government witness Chappel (A. 1177-80), and defense witnesses Ford (A. 1353-5) and Barnett (A. 1568-9).\*

15. The Fraudulent News Release and Publicity Flyer.  
(Gov. Br., p. 33)

These items have been discussed supra, at pp. 11-12, and there is no evidence that Ford had any knowledge with respect to inflated claims concerning Select acquisitions.

16. April 1970: Restoring the False Market in Select Stock.  
(Gov. Br., pp. 34-37)

A. There is no evidence that Ford had any knowledge of any perjury or subornation of perjury by witnesses called before the SEC. The government contends, however, that when Ford appeared with Boyd on April 17 before the SEC (supra, pp. 11-12), Ford "made false statements (not under oath) concerning the value of and Select's title to the California land (See: GX 29, pp. 128, 131, 132, 133-6, 147-8, 150, 159)\*\*\*". We respectfully urge this Court to examine GX 29, at pp. 128-59, wherein Ford is questioned by the SEC examiner. It is significant, that the government does not cite to page 127 of the exhibit wherein Ford states that there is no development on the two tracts of land and that the land is "table-top flat, with sandy loam soil."

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\*It should also be noted that the government refers to the meeting as being held at "Ford's office", when it was clearly established that Ford had an office in a building owned by Ford, and that Goodloe had an office there.



or to page 130 wherein Ford states "it's desert land" and that it is not in the Imperial Valley; nor does the government mention that at page 148 Ford downgrades the Imperial County land in no uncertain terms.

B. Restoring the False Market. (Gov. Br., p. 36) - there is no claim that Ford did anything to "restore the false market" or was even aware that such efforts were occurring or that there had even been a false market.

17. Mullenax's Fraudulent Loans. (Gov. Br., pp. 37-41)

There is no evidence that Ford had any participation in or knowledge of Mullenax's allegedly fraudulent activities.

ARGUMENT

POINT I

FORD SHOULD HAVE BEEN GRANTED A SEPARATE TRIAL. MOREOVER, THE GOVERNMENT'S PROOF DEMONSTRATED MULTIPLE CONSPIRACIES OF WHICH HE WAS NOT A MEMBER.

Our response to the government's statement of facts, supra, demonstrates that there were an overwhelming number of activities in the instant case as to which Ford had no knowledge or participation. By the device of shifting forward and backward in time, the government manages to make repeated references to Ford's alleged activities. In fact, there is no evidence that Ford had any knowledge of activities which occurred outside of his own presence, and

certainly had no knowledge of activities which were occurring on the East Coast, or with respect to a number of Select acquisitions, bank loans, etc. He was merely a lawyer who drew a few documents of a type with which he had familiarity, but without any demonstrated awareness of the activities of others who were interested in the Select enterprise. If he had been tried alone, he would have had some opportunity for individualized consideration by the jury. Moreover, if the numerous conspiratorial activities with which he had no connection and of which he had no knowledge had been excluded from evidence, the aura of criminality now so clear in omniscient retrospect would not have prejudicially beclouded his defense in the eyes of the jury.

Is there any factual basis upon which the government can categorically state that Ford "obtained" the mica mine and the oil and gas leases, or that Ford "backdated conveyances" or that Ford "knew of the false market activities" or that he was present when fraudulent assets were "described and evaluated at the March 28 meeting" or that he provided Barnett with false information? Each of these unequivocal assertions is made in the government's argument at p. 45 of its brief.

#### POINT II

THE COURT'S CHARGE ON MULTIPLE  
CONSPIRACIES WAS INSUFFICIENT,  
IMPROPER AND PREJUDICIAL.

It is true, as asserted by the government, that



the trial court's charge in the present case was the same as that which had been given in United States v. Tramunti, 513 F. 2d 1087, 1107 (2d Cir., 1975), insofar as the two paragraphs quoted at p. 27 of our brief are concerned. That does not make those two paragraphs any more meaningful. They can certainly not be reconciled with the subsequent decision of this Court in United States v. Cohen, 518 F. 2d 727 (2d Cir., 1975), and they certainly must be viewed within the context provided by the remainder of the charge, as noted at p. 26 of our brief.

### POINT III

#### THE COURT ERRED IN ITS CHARGE AS TO VENUE

In its one paragraph response at p. 47 of its brief, the government merely states that one conspiracy was charged and proved, thus eliminating the necessity for the Court to charge the jury that any conspiracy as to which it might find the defendant to have been a member must have included an overt act within the Southern District of New York.

Let us assume that the jury concluded that the defendant Ford was a member of a conspiracy to engage in sharp dealings with respect to Western land and mineral rights, and that such sharp dealings as to properties or prospective properties of a public company were criminally fraudulent within one or the other of the criminal statutes alleged in the indictment. Let us further assume that the

jury concluded that a separate and distinct conspiracy existed to manipulate the market in New York, and that Ford was not a member of that conspiracy. In the absence of a venue charge such as that requested in the present case, the jury could have nevertheless convicted the defendant based upon the trial court's inadequate multiple conspiracy (A. 870) and venue (A. 872) charges.

Conclusion

For all of the above reasons, as well as those advanced in our main brief, the judgment of conviction should be reversed and the indictment should be ordered dismissed. In the alternative, the appellant Ford should be granted a new trial.

Respectfully submitted,

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Robert E. Ford

April 13, 1976



copy Received at 9:05 a.m.  
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